IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Revision No. 59/2003

Nazeer Ahmed S/o Modh. Ismail ……Revisionist.

Versus

1. State of Uttaranchal
2. Nazarul Deen S/o Akbar Ali
3. Khan Ali S/o Akbar Ali ……Respondents..

Hon. Irshad Hussain, J.

Heard Sri Arvind Vashishth learned counsel for the revisionist, Sri Siddharth Shah learned counsel for the respondent no.2 & 3 and learned A.G.A. for respondent no.1.

This is a criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 (for short 'Code') against the order dated 27.3.2003 passed in criminal appeal no. 24/2000 Nazeer Ahmed Vs. State and others.

By means of an application dated 7.3.2003 under Section 391 of the Code appellant made a motion to invoke the powers of the appellate court to record additional evidence in order to prove paper no. 12-kha and also to recall all the prosecution witnesses for further cross-examination. The appellant has been convicted and sentenced for an offence under Section 420 I.P.C. per judgment dated 11.4.2000 passed by the A.C.J.M.-III, Dehradun. The allegation against the appellant was that he had cheated the complainants and induced them to part with sum of Rs. 28,000/- on the pretext of during 'parivi' on their behalf in pending litigation. Perusal of the record indicate that the appellant has altogether denied the accusations of the prosecution and did not admit on receiving the money. Now at the belated stage, the appellant want to prove paper no.12-ka in support of his defence that the sum of Rs. 28,000/- together with interest had been paid to the complainants through one D.P.Sharma on 12.11.1997, the date of the execution of said paper (12-ka.). The learned appellate court heard the counsel for the parties and rejected the application under Section 391 of the 'Code' by speaking and reasoned order dated 27.3.2003, impugned in this revision.

At the outset, it need to be mentioned that the stand of the appellant suffers from vice of laches. The appellant was convicted per judgment dated

11.4.2000 and the appeal was filed on 19.4.2000. Perusal of the copy of the order sheet of the appeal (Annexure-2 of the counter affidavit) reveal that the disposal of the appeal got delayed mainly on the account of the adjournments repeatedly sought by the appellant. After a long delay on 7.3.2003 the above mentioned application under Section 391 of the 'Code' was moved and there can be no gainsaying that the purpose has been to further delay the disposal of the appeal on merit.

With counter affidavit copy of the statement of the complainant has been furnished which indicate that the complainant was not confronted with the alleged document and also about return of the money together with interest. Perusal of the copy of the said document (annexure-2 to the revision petition) also reveal that the money was not in fact directly paid to the complainants. The recital of the document itself does not indicate that money was paid by the appellant himself. One D.P.Sharm is shown to have passed on the money to Khan Ali and Nazaruddin, the alleged complainants and the alleged acknowledgment was allegedly then issued by them. It is not in a form of affidavit although it was verified like an affidavit with photograph affixed in an unusual manner which prima-facie show that it is not a genuine document. No explanation has been given as to why the said document dated 12.11.1997 was not shown the light of the day at the appropriate time and why the complainant was not cross-exakined with reference to said alleged payment and execution of the document. Considering this aspect of the matter, I seen no force in the submission of learned counsel for the revisionist that the stand taken by the revisionist is bona-fide. Even otherwise the learned appellate court has rejected the application on valid grounds and it cannot be safely accepted that it has resulted in miscarriage of justice.

For the reasons aforesaid, this revision is devoid of merit and is hereby dismissed. Stay order dated 5.5.2003 is vacated.

(Irshad Hussain, J.)

Dated 12.12.2003

Rawat